IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

EMMA C., et al.,

Plaintiffs,

v.

DELAINE EASTIN, et al.,

Defendants.

NO. C96-4179 TEH

CLASS ACTION

ORDER RE: CONTEMPT

This matter came before the Court on Wednesday, August 22, 2001, on an Order to Show Cause why the Ravenswood City Elementary School District ("Ravenswood") should not be held in contempt for violating the Ravenswood Corrective Action Plan, adopted as an order of this Court on January 10, 2000. After carefully considering the parties' written and oral arguments, and the extensive record in this case, the Court found Ravenswood in civil contempt and stated that further explanation of the Court's reasoning would be set forth in a separate order. The Court also took under submission the issue of the appropriate coercive sanction and ordered Ravenswood to submit by August 31, 2001, further details regarding its plan to utilize an outside consultant, Dr. Michael Norman, in its efforts to implement the Ravenswood Corrective Action Plan. The Court is also in receipt of the CDE's and plaintiffs' responses to Ravenswood's post-hearing submission, dated September 4, and 6, 2001, respectively, and Ravenswood's reply thereto, filed September 13, 2001.

Having considered all of the supplemental filings, and the record herein, the Court provides further explanation of its finding of contempt, and sets forth the manner in which this case shall proceed at this juncture.

I. FACTUAL BACKGROUND

The plaintiffs in this action are children with physical, mental, or learning disabilities who attend or have attended school in Ravenswood, a relatively small district serving roughly 5,000 elementary students in East Palo Alto, California. Plaintiffs' suit, filed in 1996, alleged that Ravenswood was in violation of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.*, as well as other state and federal laws governing education of disabled children. Under the IDEA, qualified, disabled children are entitled to a "free appropriate public education" that includes an Individualized Education Plan ("IEP") tailored to each such child's unique needs. 20 U.S.C. §§ 1400(d), 1414(d). In November 1997, this Court certified a class comprised of "[c]hildren with disabilities who were, are now, or will be in the future residing within the jurisdiction of the Ravenswood Elementary School District and who were, are now, or will be in the future entitled to a free appropriate public education under federal and state laws." *See* Nov. 4, 1997 Order at 2.

The plaintiff class challenged every aspect of Ravenswood's special education efforts, alleging *inter alia* that Ravenswood fails to (1) adequately identify children with disabilities, (2) adequately assess and evaluate children once they are identified, (3) follow proper procedures in developing Individual Educational Programs ("IEPs") for children with disabilities, (4) properly implement IEPs, (5) minimize the segregation of children of disabilities to that which is necessary, (6) hire and maintain adequately trained and credentialed special education staff, and (7) maintain adequate records. The complaint further alleged that the California Department of Education ("CDE") had failed in its obligations to effectively

monitor special education services at Ravenswood and ensure that pupils are provided with a free and appropriate public education.[1]

In response to the lawsuit, CDE initiated a comprehensive investigation into the allegations in the complaint. *See* July 22, 1997 Ragsdale Decl. ¶ 9. The resulting January 8, 1998 report, compiled by a team of six professional staff, substantiated the plaintiffs' allegations, finding widespread noncompliance with special education requirements:

> The results of the investigation show that Ravenswood City Elementary School District is not (1) appropriately identifying, referring, assessing those pupils with exceptional needs, (2) providing a free appropriate public education to all pupils with exceptional needs, including the development and implementation of individualized education programs (IEPs), (3) ensuring that pupils have access to qualified staff, and (4) that the district is not providing a system to ensure that compliance with state and federal law is maintained. The results also indicate that (5) the [CDE] has not fully implemented their Monitoring responsibility to ensure that pupils are provided a free appropriate public education and that compliance is maintained.

See CDE Compliance Report #S-356-96/97 ("1998 Compliance Report") at 45.[2]

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[1] The IDEA imposes obligations directly upon the State Education Agency ("SEA"), making it ultimately responsible for compliance with statutory requirements. *See, e.g.,* 20 U.S.C. §§ 1412-13; 34 C.F.R. § 300.600; *see also* Cal. Gov't Code § 7561 (West 2001), Cal. Educ. Code § 33112(a).

[2] Illustrative of some of the more specific findings are the following: (1) "That the District did not have an adequate system to record, process and monitor referrals at either the district or [school] site level . . . . Also, in many cases staff were not able to describe this process and in some cases, parents indicated their requests for referrals had not been responded to as required by code and regulation. The District is now in the process of addressing and correcting these problems, but at this time the design and implementation of a student data base system including the tracking and monitoring of referrals has not been completed." 1998 Compliance Report at 11-12.

(2) The District does not have complete written procedures for developing and or reviewing IEPs. . . [T]here isn't any consistency in the schools across the district." *Id*. at 21-22.

(3) "The District failed to implement IEPs on a consistent basis across the district." *Id*. at 28.

(4) The District did not have any procedures and/or did not maintain a system of student record keeping at either the district and/or site level. Rather, the records at both levels were maintained by a fragmented process by different staff . . . . The District has undertaken procedures at the district level to correct problems with student record keeping . . . However, the system is still being developed . . ." *Id*. at 37.

This sweeping critique was likely no surprise to either CDE or Ravenswood. CDE had previously reviewed Ravenswood's special education services in 1993, and found the District to be noncompliant in numerous areas. *See* Oct. 1, 1997 Order at 9. According to Dr. David Ragsdale, Team Leader of the 1998 Compliance Report, "The previous failure to implement CDE's directives is the predominant reason that Ravenswood's noncompliance is still as serious as it is." July 22, 1997 Ragsdale Decl. ¶ 48. Ravenswood's failure to take effective corrective action in the face of identified problems is a pattern that has been consistently repeated.

In 1998, CDE contracted with outside consultants Dr. Alan Coulter[3] and Dr. Kathleen Gee[4] to perform a Needs Assessment ("NA") of Ravenswood. Aug. 13, 2001 Gee Decl. ¶ 9.

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(5) "The District is out of compliance for not maintaining confidential records so parents can access them and for not notifying parents of their right to access records." *Id*. at 38.

[3] Dr. Coulter received his Ph.D in School Psychology from the University of Texas, Austin. Currently, Dr. Coulter is an associate professor in the Department of Interdisciplinary Human Studies at the School of Allied Health Professions, LSU Medical Center. Dr. Coulter has consulted for numerous state departments of education and other education-related entities. In addition, he has published numerous articles and instructional media productions and telecasts on the subject of special education and school psychology.

[4] Dr. Gee received her Ph.D in Special Education from the University of California, Berkeley and San Francisco State University. Currently, Dr. Gee is an associate professor at St. Mary's College, California, at the School of Education. She has also consulted for numerous state departments of education, local education agencies, cooperatives and districts. In addition, Dr. Gee has served on many special-education related committees, and has published numerous articles on special education.

At the August 22, 2001 hearing, Ravenswood argued that Dr. Gee and Dr. Coulter are biased and asked for the opportunity to cross-examine them, based on four E-mails proffered to the Court. The Court has reviewed the E-mails which were sent by Dr. Gee between December 10, 1998 and February 1, 1999. While the E-mails reflect some of Dr. Gee's frustrations at that time regarding progress in the area of special education, they contain nothing that indicates that she harbors any unfair bias against the District. Nor did counsel proffer any communications authored by Dr. Coulter. Moreover, Dr. Gee's and Dr. Coulter's declarations are fully consistent with the declaration of Dr. David Rostetter, whom the District itself has asked to serve as a consultant, and whom the District has praised as having "extensive experience [in special education matters]. . . and [being]. . . a recognized expert in state and local education agency monitoring systems." Ravenswood's August 31, 2001 Submission of

With the assistance of a team of nationally known, experienced consultants,[5] they investigated the delivery of special education services at Ravenswood and issued a comprehensive NA Report on July 15, 1998 which confirmed the widespread failures in the area of special education identified in the 1998 Compliance Report. Aug. 13, 2001 Gee Decl. ¶ 16 ("The findings in the Needs Assessment Report echo those stated in the CDE's Jan. 8, 1998 Compliance Report in finding system-wide deficiencies in Ravenswood"); Gee Decl. ¶¶ 11-15; Exh. F to Pls.' Aug. 10, 1999 Mot. for Partial Summ. J.

Based upon the NA and the 1998 Compliance Report, Drs. Gee and Coulter developed a draft Ravenswood Corrective Action Plan ("RCAP") which contains a "comprehensive, step-by-step blueprint for transforming the District into a model of IDEA compliance." Aug. 9, 2001 Rostetter Decl. ¶ 26. Specifically, the RCAP divides the actions needed to bring Ravenswood into compliance with governing law into four broad categories: (1) the development of systems and structures required to ensure the provision of a free appropriate education ("FAPE") in the least restrictive environment ("LRE"); (2) the provision of qualified and trained personnel to serve children with disabilities, (3) the proper identification, referral, and assessment procedures for children with, or suspected of having, disabilities, and (4) the actual implementation of appropriate individual education programs ("IEPS") for each child with disabilities in the LRE. Aug.13, 2001 Gee Decl. ¶¶ 17, 23-31. Within each category, the RCAP identifies specific corrective activities, expected results, a timeline for performing

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Plan at 3. Given all of the above, Ravenswood has not demonstrated that an evidentiary hearing to explore the alleged bias of Drs. Gee and Coulter is either necessary or warranted.

[5] These consultants included Dr. Angela Rickford, Dr. Barbara Thompson, Dr. Richard Figueroa, Dr. James Tucker, Ms. Valerie Pitts-Conway, and Mr. Kevin Wooldridge. Gee Decl. ¶ 11.

the activity, the individual responsible for performance, and measures to determine compliance. *Id*. ¶ 18; *see also* Aug. 9, 2001 Coulter Decl. ¶¶ 10-11, 13.[6]

Ravenswood had an opportunity to review the draft RCAP in a series of meeting and negotiated various changes. *See* Aug. 9, 2001 Coulter Decl. ¶ 12; Aug. 13, 2001 Gee Decl. ¶ 37. CDE formally issued the RCAP as its corrective action plan on September 21, 1998 (later modified on December 10, 1998), obliging Ravenswood to implement the plan by June 30, 2001. *See* Consent Decree at 3; 20 U.S.C. § 1412(a)(11); Cal Educ. Code § 33031 (West 2001). Ravenswood had also agreed, back in May 1998, "to comply with [the 1998 Compliance Report] and [the] RCAP ordered by CDE pursuant to regulation and law " as part of a proposed settlement of this case. Dec. 28, 1998 Sagy Decl., Exh. B. ¶ 3. On March 29, 1999, the Court preliminarily approved the RCAP as the substantive remedy for plaintiffs' claims for injunctive relief subject to a fairness hearing pursuant to Fed. R. Civ. P. 23. The Court, however, rejected the parties' proposed overall settlement of the case as wholly inadequate to protect the interests of the class.[7] At that hearing -- approximately two-

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[6] CDE subsequently added a fifth section to the RCAP in response to findings concerning Ravenswood made by the United States Department of Education, Office of Civil Rights. This fifth section concerns the adoption of procedures to implement Section 504 of the Rehabilitation Act, and focuses on training interpreters, delivering appropriate special education instruction to students who have limited English proficiency, hiring staff with appropriate training and credentials, and providing parents with translated documents upon request.

[7] The proposed "consent decree" was in fact two separate, non-integrated, settlement agreements, one with Ravenswood, and one with CDE. (Ravenswood had apparently declined to participate in a comprehensive settlement with all the parties). As the separate agreements (and the parties' papers) made clear, they failed to resolve very serious disputes between defendants with respect to their respective legal and financial obligations.

The settlement agreements also failed to adequately address the important issue of monitoring and court supervision of the remedial process. The Ravenswood agreement completely failed to address this issue. The CDE agreement, while it addressed monitoring and court supervision, was not binding on Ravenswood, and was overly simplistic on this point.

Third, the proposed agreements were out of date, obsolete in certain respects, and poorly drafted, leaving many items vague and unclear.

Thus, while the Court preliminarily approved the RCAP as the substantive remedy

and-a-half years ago -- the Court warned Ravenswood that it was "gravely troubled" by Ravenswood's attitude toward the case:

> I'm gravely troubled. Let me repeat that. I'm gravely troubled by the apparent attitude of the Ravenswood school district in light of the record in this case. Nothing in Ravenswood's approach to this litigation -- from the inception of this case up to and including its approach to this motion for preliminary approval -- gives me reason to believe that the school district understands the implications of its conduct or is committed to moving forward and advancing the remedial process in a productive and constructive manner.

March 29, 1999 Tr. at 9.

Several months later, on September 2, 1999, the parties signed a much improved, revised consent decree, which again incorporated the December 10, 1998 RCAP as "the remedy for Plaintiffs' claims for injunctive relief." Consent Decree at 3. The Consent Decree was then preliminarily approved on November 2, 1999, and finally approved on January 18, 2000, after notice to the class. In this same order the Court made the RCAP, which is referenced in the consent decree, "a final order of the Court that shall be enforced as an order of the Court and that may be modified or supplemented only upon Court approval." Jan. 18, 2000 Order at 2, ¶ 1. The Court Monitor appointed pursuant to the Decree began fulfilling his duties full-time on January 1, 2000.

In early 2000, it became apparent that Ravenswood had done virtually nothing to begin implementing the RCAP -- although it had been well aware of its special education deficiencies for years, the CDE had formally issued the RCAP *over a year* earlier, in September 1998, and Ravenswood itself had agreed to implement the RCAP back in May 1998 in order to settle this case. Accordingly, the Court Monitor was forced to recommend to the Court, in consultation with the parties, a revamping of many of the original RCAP deadlines. Under the new terms, agreed to by Ravenswood, it was still required to achieve final RCAP implementation by June 30, 2001, but the deadlines for completing key specific activities

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which, if implemented, would effectively address the plaintiffs' core claims for injunctive relief, it rejected the two separate and uncoordinated agreements with Ravenswood and CDE on the ground that they failed to provide a fair, adequate, and reasonable settlement for the class under Federal Rule of Civil Procedure 23.

were substantially extended from the previous deadlines. *See* May 25, 2000 Order Approving Modified RCAP at 1. The Court emphasized again that "the RCAP as modified above constitutes a final order of the Court and shall be enforced as an order of the Court. . . . In this respect, the Court notes that it expects that the person(s) identified as the "Person Responsible" for each corrective action in the RCAP *shall be accountable for the satisfactory completion of such action.*" *Id*. at 2 (emphasis added).

As the number and difficulty of the required RCAP activities increased, the Monitor's monthly report cards began to show a disturbing trend of increasing non-compliance. While the early report cards in 2000 showed compliance rates ranging from 36% to 85.71%, they dropped dramatically to 27.27% in June, then 0% for July and August, 8.11% for September, and then 0% for October and November. In November 2000, plaintiffs wrote to the Court expressing their concerns regarding the lack of implementation of the RCAP. In response, and in order to help facilitate and encourage a more intensified effort by Ravenswood, the Court commenced monthly meetings at the Courthouse to address issues pertaining to RCAP implementation as they arose. These meetings were attended by the Court Monitor, counsel, one member of the Board of Trustees of Ravenswood, the Ravenswood Superintendent and Assistant Superintendent responsible for Special Education, the State Superintendent of Public Instruction or a senior designee, and either the undersigned judge or court staff.

Compliance rates nonetheless continued to hover at abysmal rates (0% for December 2000, 7.69% for February 2001, 0% for March 2001). While Ravenswood was achieving partial compliance on some additional measures, the degree of partial compliance was often minimal. In any event, partial compliance necessarily means that the requirement was not satisfied and thus not fully and effectively implemented. As such, the overall compliance picture was extremely bleak.

At the same time, Ravenswood's approach to RCAP implementation was less than cooperative and sometimes outright recalcitrant. As one example, although Ravenswood had agreed to the RCAP, it refused to comply with RCAP items 3G, 3H, 3J, 3K, 3O, and 3P, citing

"inapposite" authority.[8] *See* Dec. 8, 2000 Order at 2. The Court warned the parties in that Order of "the Court's growing concern about the District's ability to perform the functions mandated by the RCAP and the Consent Decree, and of the potential need for the CDE to perform an expanded role in ensuring that the special education needs of the plaintiff class members are met." Dec. 8, 2000 Order at 2-3. Another example concerns RCAP item 2.M.I., which required the District to develop a plan to provide mentored training/coaching to district staff -- a key component of the RCAP. Although given "numerous" opportunities, Ravenswood repeatedly failed to develop a plan, much less implement it. *See* Jan. 24, 2001 Order at 2. The Court again warned the parties "of the Court's growing concern about the District's apparent inability to perform the functions mandated by the RCAP and the Consent Decree, and of the potential need for the CDE to perform an expanded role." Jan. 24, 2001 Order at 2.

In early March 2001 -- three months before the RCAP was to have been fully implemented -- Ravenswood responded to the mounting record of noncompliance by proposing that the Court extend the already modified RCAP deadlines substantially, in some cases up to two years. Plaintiffs this time objected to any extensions of the RCAP deadlines, convinced that this approach would result only in further delay rather than genuine progress. *See* Pls.' March 7, 2001 letter, April 16, 2001 Sagy Decl., Exh. D. ("We see absolutely no justification to the Defendants' request for an additional two year extension period . . . . More importantly, we have no confidence that the Defendants' efforts to reach compliance with the RCAP in the future will be any more successful than those in the past."). On March 19, 2001, plaintiffs filed a Motion for an Order to Show Cause Why Defendants Should Not be Held in Contempt of Court and Be Sanctioned.

[8] These items required Ravenswood to consider the input of consultants (who were providing training, technical assistance, mentoring, and coaching to the District's psychologists), when evaluating the District psychologists, and in the development of any needed performance improvement plans. *See* Modified RCAP.

At the April 30, 2001 hearing on plaintiffs' motion, the Court agreed with CDE and plaintiffs' assessment that the "current state of RCAP implementation is intolerable." April 30, 2001 Tr. at 4. Specifically, the Court ruled, upon review of the record, that:

> [T]he Monitor's last 11 monthly report cards present a stark pattern of consistent non-compliance with the RCAP. Of the 200 items that Ravenswood should have completed by now under the modified RCAP deadline, it has failed to fully and satisfactorily complete over two-thirds, or 67 and -a -half percent of them. Even more distressing to me is the fact that the 67 and -a-half percent is not related to minor or collateral parts of the RCAP. It represents the very core of the remedial plan
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> . . . . [W]hile Ravenswood has made some progress around the edges . . . it's accomplished little in terms of implementing the heart of the remedy.

Id. at 4-5, 6

The Court was also disturbed that Ravenswood's actions continued to reflect a lack of commitment to implementing the remedy. The Court Monitor reported that the Superintendent and a principal had expressed sentiments that were likely to discourage RCAP compliance. *See, e.g.,* Mlawer May 7, 2001 Mem., attached to Court's May 17, 2001 Order Re Dr. Knight's Resp. to Ct.'s April 30, 2001 Order. And just one week before the hearing on plaintiffs' contempt motion, an RCAP training session for principals was very poorly attended. Dr. Knight's explanation for their sparse showing "raised more questions than it answered." *See* May 17, 2001 Order at 2.

Accordingly, at this same April 30th hearing, the Court again emphasized to Ravenswood that its negative attitude, and failure to embrace the remedy, was deeply disturbing. Specifically, the Court warned the District that:

> [I]t's alarming that the District nowhere in its papers even acknowledges that there's a problem with the rate of implementation of the remedy. . . . The District's answer to the current situation is simply to give itself a lengthy, up to two-year, extension for meeting many of the RCAP requirements. If the Court felt that Ravenswood was doing all it could possibly do, or reasonably do, and simply needed more time, this might be a well received suggestion. It is not, however, given the record before me. In my experience with this District over the years in this case . . . I see a District that's so far appeared disinterested, unmotivated and unwilling, or some combination thereof, to turn the RCAP into more than just a symbolic piece of paper. . . . [I]t's almost as if [Ravenswood] signed the papers, the consent decree, and then said, Why are you bothering us? Go away
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> . . . . .

> . . . . You can be assured that I'm prepared to use the full extent of [a federal court's] powers . . . as is needed, to get this RCAP implemented and implemented fully.

April 30, 2001 Tr. at 7-8, 12.

The Court made clear that it was "most inclined" to find Ravenswood in contempt at that time. *Id*. at 9. As indicated above, Ravenswood was severely out of compliance with the Court ordered deadlines set forth in the RCAP, and had failed to demonstrate that it had taken all reasonable steps to comply. *See id*. at 6 ("Ravenswood does not even make a serious attempt to justify the appalling lack of progress it has made."). Out of an abundance of caution, however, the Court refrained from immediately issuing the Order to Show Cause re Contempt because of a possible ambiguity created by the Monitor's Report Cards. As the Court explained, when Ravenswood missed (often repeatedly) a deadline in the RCAP, the Monitor's practice was to document this failure in his Report Card and identify a "revised timeline" when he would re-visit the item. The parties were certainly well aware that only the Court could modify an RCAP deadline, *see* Jan 18, 2000 Order at 2, ¶ 1, and therefore the Monitor could not unilaterally extend deadlines but rather only set re-monitoring dates. However, to compensate for any ambiguity the Monitor's terminology might have created, and to give Ravenswood every benefit of the doubt, the Court continued plaintiffs' contempt motion for three months to give the Court an opportunity to review additional monthly report cards for the months April through June.

The Court further ordered that both the Ravenswood Superintendent, Dr. Knight, and CDE's Ravenswood liaison, Christine Pittman, appear personally in court every 30 days over the next three months to testify regarding the efforts being made to implement the RCAP. In addition, CDE was ordered to substantially increase its assistance to the District. Specifically, it was directed to prepare a work plan and schedule of activities for the District to follow that was designed to complete each RCAP requirement, provide the District with all necessary training and technical assistance resources to complete the work plan, and work closely with Ravenswood personnel to ensure they understood the actions needed to complete the work plan. *See* May 10, 2001 Order at 2.

The Court concluded the April 30, 2001 hearing by observing that if Ravenswood "continued its pattern of consistent non-compliance," and did not show a "dramatic turnaround in both action and attitude," it would promptly issue the order to show cause why Ravenswood should not be held in contempt. April 30, 2001 Tr. 11-12. The Court again warned Ravenswood that the Court would "order such coercive actions as appear to be minimally necessary to procure Ravenswood's compliance with the Consent Decree and with the RCAP." *Id*. at 12.

In early May, CDE conducted a Verification Review of Ravenswood. The verification team, which included outside consultants, reviewed 50 student files, and interviewed administrators, special and general education staff, parents of children with disabilities and special education students. Aug. 9, 2001 Rostetter Decl., ¶ 18; Aug. 13, 2001 Pittman Decl. ¶ 6, attached to CDE's Resp. to OSC. All too predictably, the Verification Review confirmed that as of May, 2001, there were 54 items of systemic noncompliance based on over 400 individual problems noted in the student files. Aug. 13 2001 Pittman Decl. ¶ 6. In short, the review team found that there was "*gross, systemic noncompliance with the IDEA* resulting in the *pervasive denial of FAPE in the LRE to children with disabilities* in the District." Aug. 9, 2001 Rostetter Decl. ¶ 21 (emphasis added).[9]

Unfortunately, in the period May through June, Ravenswood achieved disappointingly little progress --notwithstanding that it was under the threat of contempt proceedings, subject to the intensified scrutiny of the Court, and the beneficiary of greatly enhanced technical assistance from the CDE. Pursuant to the Court's April 30, 2001 ruling, it held three evidentiary hearings, on May 31, 2001, June 27, 2001, and July 26, 2001, at which it heard testimony from both Dr. Knight and Ms. Pittman and received supporting documentation.

[9] Dr. David Rostetter, who assisted with Verification Review, holds a Masters Degree and an Ed.D. in Education Administration from the State University of New York at Albany. Among other things, Dr. Rostetter has served as a consultant to state and local education agencies in special education matters in over 20 states and U.S. territories, and has served as court monitor or consultant in various cases. As noted *supra,* note 4, the District has asked Dr. Rostetter to serve as a consultant.

While there was a buzz of activity, and the Court clearly caught the attention of the Ravenswood Superintendent,[10] actual progress fell short of what could and should have been accomplished during that time period. The Monitor's report cards for May and June showed paltry compliance rates of only 7.69% and 4.55% respectively.

The testimony during this period reflected some of the same dysfunction in Ravenswood that has impeded past implementation of the RCAP ranging from the bungling of minor administrative tasks, *see* Pittman, June 27, 2001 Tr. at 75, to the ineffectiveness of the Assistant Superintendent, *see* Pittman, July 26, 2001 Tr. at 77, Knight, July 26, 2001 Tr. at 62 (explaining that Assistant Superintendent was being replaced), to the failure to follow through even on promises made in open court. As discussed, *infra*, despite representations from Dr. Knight that certain activities would be completed in the near future, many such promises were not fulfilled. At the July hearing, the Court also raised questions regarding the Superintendent's candor, *see* July 26, 2001 Tr. at 5, which questions have only been heightened by the recent filing of fraudulent petitions in this action.[11]

At the end of the three-month period, the Court concluded that while there had been some change in attitude, Ravenswood had not demonstrated the "dramatic turnaround in both action and attitude" over the previous three months necessary to dissuade the Court from granting plaintiffs' request for an Order to Show Cause. July 26, 2001 Tr. at 109-111. Accordingly, the Court ordered Ravenswood to Show Cause why it should not be held in

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[10] As Counsel for Ravenswood agreed, plaintiffs' contempt motion had provided a "substantial benefit" by obtaining "the Superintendent's attention, which, I think, for a number of reasons, including her prior counsel's belief as to how the case should proceed, the Court had not had . " Aug. 22, 2001 Tr. at 12; *see also* Ravenswood's Resp. to OSC at 3 (The pending contempt motion had a "positive impact . . . in creating a sense of urgency that has resulted in the District redoubling its efforts to get the job done").

[11] As set forth in the Order of Referral Re Possible Sanctions, filed simultaneously herewith, counsel for Ravenswood filed on August 22, 2001, petitions in support of the Ravenswood Board of Trustees and Ravenswood Superintendent Dr. Charlie Mae Knight. Counsel subsequently withdrew the petitions, admitting that they contained signatures that had been obtained for other matters in 1997 and 2000.

contempt for violating the RCAP, entered as a final order of the Court on January 18, 2000. The Court further directed the Court Monitor to prepare a report regarding Ravenswood's compliance efforts based upon his full-time monitoring of the remedial plan since January 2000. Finally, the Court ordered all of the parties to also address the issue of what remedies the Court should consider in order to coerce compliance with the RCAP in the event of a finding of contempt.

II. WHETHER RAVENSWOOD IS IN CIVIL CONTEMPT

Under well settled law, civil contempt occurs when a party disobeys "a specific and definite court order by failure to take all reasonable steps within the party's power to comply." *Go-Video, Inc. v. The Motion Picture Assoc. of Am.*, 10 F.3d 693, 695 (9th Cir. 1993). It is initially the plaintiffs' burden to demonstrate, by clear and convincing evidence, that the alleged contemnors violated a specific and definite order of the Court. *Id*.; *Stone v. San Francisco*, 968 F.2d 850, 856, n. 9 (9th Cir. 1992). The burden then shifts to the contemnors "to demonstrate why they were unable to comply." *Stone*, 968 F.2d at 856, n. 9. To satisfy this burden, contemnors must show that they took "every reasonable step to comply." *Id*.; *Sekaquaptewa v. MacDonald*, 544 F.2d 396, 404 (9th Cir. 1976) (issue is whether defendants have performed "all reasonable steps within their power to insure compliance").

The purpose of civil contempt is remedial, not punitive. As such, the failure to comply need not be wilful or intentional, and good faith is not a defense. *Go-Video*, 10 F.3d at 695; *Stone*, 968 F.2d at 856. Indeed, intent is "irrelevant." *Id*. Where every reasonable effort has been made to comply, however, a few technical or inadvertent violations will not support a finding of contempt. *Go-Video*, 0 F.3d at 695; *General Signal Corp. v. Donallco, Inc.*, 787 F.2d 1376, 1379 (9th Cir. 1986). Nor is contempt appropriate if the party's action is "based on a good faith and reasonable interpretation" of the decree. *Go-Video*, 10 F.3d at 695. For the reasons explained below, this Court concludes that a finding of civil contempt is amply justified in this case.

A. Violation of a Specific and Definite Court Order

(1) *Whether the RCAP is a "specific and definite" Court Order*

As described above, the RCAP is divided into five categories, each of which contain detailed corrective actions, a precise deadline for completing the action, and the person responsible for the action. Ravenswood nonetheless contends that the RCAP is not sufficiently specific and definite to be enforceable on contempt. On its face, this argument is disingenuous. Ravenswood expressly agreed to implement the RCAP and make it an enforceable order of the Court in settlement of this case. *See* Consent Decree at 16 ("Upon the approval of this Decree by the Court, this Decree, including all of its exhibits, and the RCAP . . . shall become a Decree of the Court, and *shall be enforced as an order entered by this Court*.") (emphasis added); *see also* Jan. 18, 2000 Order at 2, ¶ 1 (approving Consent Decree and making RCAP "a final order of the Court that shall be enforced as an order of the Court "). Moreover, Ravenswood in other papers concedes that the RCAP "is a comprehensive document that provides "*specific direction to the District*" and in fact complains that the RCAP's "detail" may "interfere with understanding the larger picture of service delivery ." *See* Ravenswood's Aug. 31, 2001 Submission at 7 (emphasis added); *see also* Aug. 22, 2001 Tr. at 14 (Ravenswood describing RCAP as "so detailed that it can be viewed as a checklist."). Given the above, Ravenswood's contention that the RCAP is too vague and indefinite to support a proceeding for contempt is meritless.

Ravenswood's argument rests primarily on its contention that the CDE and the Court Monitor disagreed on how to "grade" certain of Ravenswood's activities, which, in its view, demonstrates the ambiguous character of the RCAP requirements. The CDE and the Court Monitor, however, were "grading" different things. The Monitor was evaluating Ravenswood's compliance with RCAP requirements while CDE was assessing whether Ravenswood had completed incremental step-by-step activities it had outlined in monthly work plans for the

months May through July 2001. Accordingly, this argument must fail.[12] Ravenswood also implies that some RCAP provisions are ambiguous or too subjective because it disagrees with the Monitor's assessment of the District's degree of compliance. The fact that Ravenswood may disagree with the Monitor's assessment, however, does not establish that the RCAP requirement is vague and ambiguous. Finally, even assuming *arguendo* that a few of the 259 individual items lacked sufficient specificity, this would not render the entire RCAP unenforceable.

(2) *Evidence of a violation*

There can be no genuine dispute that Ravenswood is in violation of the RCAP. Although the RCAP was to be fully implemented by June 2001, *see* May 25, 2000 Order (adopting modified RCAP), Ravenswood has so far made only "very meager progress." Mlawer's August 3, 2001 Resp. to Ct.'s Directive ("Monitor's Report") at 4; *see also id*. at 10 ("while there has been some small amounts of progress in some areas, the district has not progressed very far toward the outcomes for students required by the RCAP").

As of July 2001, Ravenswood had yet to comply with the majority (62.5%) of the RCAP requirements. Moreover, the third of the RCAP items that had been fully implemented concern, for the most part, the "least challenging [RCAP] activities" such as setting up an RCAP Committee, selecting a parent to participate on the SELPA's Community Advisory Counsel, developing policies and procedures to provide staff with access to professional literature, training and conferences, submitting a monthly list of translated documents to the monitor, and requesting copies of sample manual, policies and procedures from OCR. Monitor's Report at

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[12] Even if one accepted the comparisons Ravenswood is trying to make, it essentially shows differences only in whether Ravenswood was graded partially compliant or simply noncompliant. Indeed, with a couple of exceptions, the CDE and the Monitor consistently agreed that Ravenswood had not successfully completed the RCAP requirements at issue during this three-month period.

Indeed, the Monitor's Report, along with the recent Verification Review-- which as discussed above found 54 items of systemic non-compliance-- paint a grim picture of a district that is massively out of compliance with special education requirements, and far from full implementation of the RCAP. *See also* Aug. 9, 2001 Rostetter Decl. ¶ 21 ("In each of the vital areas . . . the current data . . . as well as information collected during the verification review process, confirm that there is gross, systemic noncompliance with the IDEA resulting in the pervasive denial of FAPE in the LRE to children with disabilities in the District."). *See also* Aug. 13, 2001Pittman Decl. ¶ 7 (The "inescapable conclusion" from the Verification Review and Monitor's Report Cards is "a profoundly failed system in every major area .").

As the Court Monitor reported, the "most substantive part of the remedy" awaits implementation. Monitor's Report at 5. Specifically, the District has "failed to implement any systems for developing policies and procedure, hiring, training,[13] or supervising qualified staff, writing proper IEPs, conducting timely IEP reviews and assessments, or monitoring and evaluating the delivery of services or the progress of students toward their IEP goals and benchmarks." Aug. 13, 2001 Pittman Decl. ¶ 7; *see also* Monitor's Report at 5 (outlining areas in which little progress has been made). Notably, in some areas the District is in fact *losing* ground. For example, although the RCAP requires placing students in the least restrictive environment in which their individualized education program can be satisfactorily implemented, the trend in the District has been toward *increased* segregation of disabled students, with the number of disabled students in county self-contained programs rising almost 50 percent from 61 in 1995 to 90 in 2000. Monitor's Report at 5.

The District does not seriously dispute that significant portions of the RCAP remain unimplemented. Rather, it implicitly concedes this point given its plan to hire a consultant to help it make a plan to implement the RCAP. As the District acknowledged at the August 22, 2001 hearing, it needs time to "come up with a plan that everyone can sign on to . . . to make

[13] As of August 2001 Monitor's Report, of the nineteen RCAP sections (2.E. through 2.W) that are devoted to training, seventeen have yet to be fully implemented.

true achievements happen in the future . . . [and] get at the core values of the Consent Decree that the plaintiffs rightly refer to." Aug. 22, 2001 Tr. at 14. *See also* Ravenswood's Aug. 31, 2001 Submission at 3-4 (Describing District's plan to hire consultant who will *inter alia* provide school leaders with the information and resources necessary "to implement a special education service delivery system that meets the requirements of the Consent Decree").[14]

In short, the evidence is both clear and convincing -- indeed overwhelming -- that Ravenswood has violated a specific and definite order of the Court.

B. Use of All Reasonable Steps within Power to Comply

Having reviewed the record as a whole, the Court is also amply convinced that Ravenswood has failed to take all reasonable steps in its power to comply with the RCAP. Indeed, it is acutely evident that Ravenswood, for the most part, viewed the RCAP as an intrusion to be avoided rather than a challenge to be embraced. The record on this point is both compelling and overwhelming.

The period leading up to the Court's January 18, 2000 final approval of the RCAP provides a telling backdrop. After development of the RCAP in 1998, Drs. Gee and Coulter

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[14] As noted above, the District takes issue with some of the Monitor's conclusions regarding the District's degree of compliance with respect to some of the RCAP items. The Court does not find these complaints meritorious. For example, at the July 26, 2001 hearing, Dr. Knight complained that the Monitor had marked RCAP item 2.W.2 partially compliant instead of compliant because the District had developed, but not yet implemented a recruitment plan, and the "RCAP only called for us to design a plan." Tr. at 30 . RCAP item 2.W.2., however, explicitly requires the District to "design[] and implement[] a plan for recruitment and retention of qualified staff." *See* Modified RCAP, attached to Monitor's May 19, 2000 Mem. In any event, the District's quarrels with certain of the Monitor's conclusions does not detract from the indisputable fact that Ravenswood has failed to implement substantial portions of the RCAP.

each spent about two weeks a month over a period of twenty months in the District attending meetings with principals, teachers, psychologists, general administration staff and parents. Through this intensive contact, they became very familiar with Ravenswood's efforts to implement the RCAP. Aug. 9, 2001 Coulter Decl. ¶ 16; Aug. 13, 2001 Gee Decl. ¶ 33. As Dr. Coulter described, during their 20 months work:

> [We] saw no progress in the District's acceptance of the fact that a change in Ravenswood's service delivery system was necessary if Ravenswood were to be capable of providing FAPE to children with disabilities. In general, I saw no efforts to understand the RCAP, adopt, and implement its provisions .
>
> . . . [W]e were faced with fundamental and continual resistance to implementation of the RCAP from top administrative levels, resistance that permeated and trickled down to the lower levels of administration. It was my impression that Dr. Knight did not take the time to fully understand the RCAP . . . did not provide the oversight necessary to implement the RCAP, did not set up an accountability and management structure that would ensure implementation of the RCAP, and did not set a tone among her faculty and staff that would encourage RCAP implementation. It was as though Dr. Knight thought that the RCAP would 'just go away' if she herself ignored it.

Aug. 9, 2001 Coulter Decl. ¶¶ 18-19. Dr. Gee's observations were similar:

> During [the 20 months], we saw no progress in the District's acceptance of the fact that a change in Ravenswood's service delivery system was necessary. As a result, no systemic efforts were made to achieve compliance. In direct opposition, we faced many activities of resistance to the implementation of the RCAP by Dr. Joseph Totter, the director of special education services.

Aug. 13, 2001 Gee Decl. ¶ 35. Due to their frustration, and after "much deliberation," Dr. Coulter and Dr. Gee both resigned in May 1999 from their positions monitoring RCAP implementation for CDE. *Id*. As Dr. Coulter explained, although "[r]esigning . . . was an extremely difficult and last resort decision for me," they were "frustrated with the absolute lack of progress, and [saw] no chance of improvement in the District's administration's attitude." Aug. 9, 2001 Coulter Decl. ¶ 22 ; Aug. 13, 2001 Gee Decl. ¶ 35 ("It was our view . . . that one of two things was required: either cooperation or authority. We had neither.").

From the time of the resignations in May 1999 through the arrival of the Court Monitor in January 2000, little additional progress was made, necessitating as noted earlier, a revamping of the RCAP deadlines. Even the appearance of the Court Monitor (and final Court approval of the RCAP) did little to spur sustained progress, as is reflected by the month-after-

month bleak report cards showing negligible progress since mid-2000. During this period, leadership in the District in the area of special education remained lackluster and ineffectual. Until just recently, the Board of Trustees -- the body ultimately responsible for special education compliance in Ravenswood -- never expressed any concerns to the Monitor, and the Monitor was never asked to attend a Board meeting to discuss the RCAP. Monitor's Report at 2. Similarly, "the necessary leadership from the district's Superintendent and former Associate Superintendent on RCAP implementation has rarely been in evidence . . . . [Rather], [t]he lack of leadership . . . has been palpable." *Id.* As the Court Monitor has reported, the Superintendent has, in his presence, and in the presence of staff, complained about the RCAP and suggested that it is unfair that Ravenswood has to implement a remedial plan while other districts do not. Such remarks appear more designed to denigrate the RCAP rather than motivate and energize staff to embrace and implement the remedy. *See* April 27, 2001 Mlawer Memo, attached to May 17, 2001 Order Re Dr. Knight's Resp. to Ct.'s April 30, 2001 Order.

One serious consequence of the lack of leadership has been the Superintendent's failure to effectively supervise and hold accountable principals and staff in matters relating to special education. Thus, even when the Superintendent sends out a directive to her principals or staff regarding special education matters, it may well go unenforced. *See e.g.* Aug. 13, 2001 Pittman Decl. ¶ 9, attached to State's Resp. to OSC (Although Ravenswood was required to send 13 school site teams to Positive Behavior Training, "[a]fter seven months of scheduling efforts by the trainers, including several directives by Superintendent Charlie Mae Knight to staff, only two teams had completed the training. Despite having scheduled make up sessions at district request for Friday and Saturday, plus numerous make up sessions, site staff failed to show up repeatedly for this required training. There were no disciplinary consequences for principals or staff who failed to attend . . . [T]his chain of events sends a message to site staff that district directives and the RCAP itself are unimportant and an unnecessary intrusion"). The Court Monitor has similarly reported that:

> [I]n spite of a memo from the Superintendent to principals which mandated that a Student Success Team (SST) meeting be held for any student in danger of retention in the '00 - '01 school year, over four out of every ten students

> retained did not receive services from their school's SST, according to data provided by the district. In addition, over 50% of those who did receive SST attention had their first meeting on or after 3/1/01, arguably too late in the school year to help a student improve performance and avoid retention.

Monitor's Report at 7-8. In yet another example, a memo from the Superintendent concerning a RCAP-required training for principals went largely unheeded when eight of the District's 13 principals failed to attend. *See* May 17, 2001 Order Re Knight's Resp. to Ct.'s April 30, 2001 Order and attachments thereto.

Another serious consequence has been Ravenswood's failure to fully utilize available resources. The Monitor found for example, that the District was not making its own staff aware that specially hired consultants were available to assist them. *See* June Timelines Report, Section II at 18 ("The majority of special educators, speech therapists, and psychologists interviewed were not made aware by the district that the inclusion consultants hired by the Monitor were available to assist them in [implementing RCAP requirement 4.I.5]"); *see also id*. at 19. Ms. Pittman also testified about the District's failure to promptly follow up on consultant resources made available by the CDE.[15] *See also* Aug. 9, 2001 Rostetter Decl. ¶ 27 ("Rather than embracing the infusion of expertise and resources to transform its special education program, the upper management appears to regard the efforts to meaningful implementation [sic] of the RCAP as unwelcome interference"); Aug. 9, 2001 Coulter Decl. ¶ 17 ("I saw almost [no one] taking advantage of the resources available to the District pursuant to the RCAP to adopt compliant and sound practices in special education"); Monitor's Report at 6 ("Often the monitor has given the district detailed guidance on meeting particular requirements, but the district has not followed up.").

As discussed above, the instant contempt proceedings finally captured Ravenswood's attention in April 2001, and some improved progress did result. It is clear to the Court,

[15] One small example concerns an experienced consultant, Judy Hegenauer, referred to the District by CDE. Dr. Knight testified that Ms. Hegenauer "did not have adequate time to devote to this project." However, when CDE recruited her "she had two weeks available, but unfortunately, by the time the District contacted her, she only had five days left." June 27, 2001 Tr. at 42.

however, that the degree of progress was still falling far short of that needed to ensure effective implementation of the RCAP in a timely manner. Moreover, the evidence continued to raise questions regarding the District's commitment and ability to implement the RCAP. One example of many is Ms. Pittman's testimony regarding a meeting she attended in May about implementing the District's LRE plan:

> One of the real concerns was at that meeting it seems that the [Ravenswood] person who was to be lead on this effort, that was the first time she was informed of that role and was unaware of the [LRE] plan having been approved and didn't have a copy of the approved plan.

June 4, 2001 Tr. 22. *See also* Aug. 13, 2001 Pittman Decl. ¶ 8, attached to CDE's Resp. to OSC ("The district staff report that they do not know district policy or procedure in key areas").[16] And on August 15, 2001, the Court Monitor issued seven new directives to Ravenswood regarding activities that the District had *repeatedly* failed to complete. [17] All in

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[16] *See also* Aug. 13, 2001 Pittman Decl. ¶ 9 at 8 (Although the RCAP requires the district to translate IEP and other special education documents in the primary languages of the students and parents, the district "initially failed to develop a plan for this activity, failed to include the district's multilingual office in the process, and later failed to implement the plan eventually developed per CDE instruction to contract with Stanford University for the services. There was no follow through by [the Assistant Superintendent of Special Education], no coordination between district administrators, and no oversight by the superintendent. The net result is that documents are not being translated on a timely basis by qualified staff and parents are therefore unable to understand the contents of IEPs.").

[17] The Court cites but two of these seven as examples. The first concerns a policy Ravenswood had developed on May 31, 2000 and revised on July 6, 2000 regarding parent participation in the assessment process. The Monitor, however, discovered that the policy was not being fully implemented. "The Monitor's December 2000 Timelines report found no evidence that the aspect of the procedures regarding assessors making available to parents the results of assessment prior to IEP meetings, and discussing those results with parents prior to the meeting if requested, were being implemented." Aug.15, 2001 Directive Re RCAP Item 1.L.3. Accordingly, the Monitor recommended that the District set forth in writing steps it will take to ensure that its procedures regarding parent participation in the assessment process are fully implemented. A re-monitoring date of 2/28/01 was set. However, no response was received. The February 2001 Report set a re-monitoring date of 4/30/01. Again no response. The April 2001 Report set a re-monitoring date of 5/31/01. Again no response. The May 2001 Report set a re-monitoring date of 7/31/01. Again no response.

The second concerns RCAP item 3.J.4. which requires the District to develop procedures and methods of supervision that ensure that all assessment procedures used are

all, the Court was not persuaded that there had been a sufficiently dramatic change of attitude or action to dissuade it from issuing the Order to Show Cause. As previously noted, the Court explained that the last few months had "served largely to spotlight the limitations . . . if not incompetence, of the then Assistant Superintendent of Special Education." August 22, 2001 Tr. at 67.

In short, the meager progress achieved to date-- amply documented above-- combined with the lack of effective leadership in the area of special education, and the failure to fully utilize available resources, make it patently clear that the District has not "taken all reasonable steps in its power" to achieve implementation of the RCAP. *See Go Video*, 10 F.3d at 695. The record also indicates that Ravenswood implicitly concedes this very fact. First, as noted above Ravenswood admitted at the August 22, 2001 hearing that, prior to these contempt proceedings, this case did not have the "Superintendent's attention." Aug. 22, 2001 Tr. at 12. While the evidence discussed above indicates an administration that has often been affirmatively resistant, not just inattentive, even a simply inattentive administration has, by definition, not done everything within its power to reasonably comply. Second, the Superintendent testified in May 2001 that she has "been in [the Court Monitor's] office more times in the last month than [she has] been in since he's been here [starting back in January 2000]." May 31, 2001 Tr. at 47. And in June 2001, she testified that she now had ten people working on RCAP implementation in different capacities. While these increased efforts are to be commended, surely they could have been undertaken long ago. Similarly, the District's current proposal to hire an outside consultant to devise a plan and strategy to help it implement the RCAP is clearly a step within its power that could have been taken before. The same can be said for the other steps it states it now intends to take: appointing a Board of Trustees subcommittee to engage in active oversight of the RCAP process, forming an alliance with the

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valid for the specific purpose for which they are used. The Monitor's October/November 2000 Report found that the district had not adopted procedures and methods of supervision in this area and set a re-monitoring date of 1/31/01. No response was received. The January 2001 Report set a re-monitoring date of 3/31/01. Again no response. The March 2001 Report set a re-monitoring date of 5/31/01. Again no response. The May 2001 Report set a re-monitoring date of 7/31/01. Again no response.

University of San Francisco's Education Department, and obtaining the cooperation of the San Mateo County Superintendent of Education. *United States v. Hawaii*, 885 F.Supp. 212, 216 (D. Haw. 1995) ("The 'new and improved' conduct and plans offered by Defendants are laudable, but they are also evidence of previous reasonable steps that should have been taken.").

Notwithstanding all of the above, the District vigorously contends that the Court should nonetheless find that it has, in fact, taken all reasonable steps within its powers to comply with the RCAP. None of the proffered arguments, however, are persuasive. First, Ravenswood's assertion that it has made "substantial progress" is both factually incorrect and legally insufficient. Ravenswood emphasizes that (1) the Monitor identified several substantive accomplishments of the District,[18] and (2) that if the RCAP items for which the District is in "partial compliance" are combined with items for which the District has achieved "compliance," then the District is either in full or partial compliance of the majority --or 68% -- of the RCAP.[19]

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[18] The specific accomplishments identified by the Monitor are as follows: (1) developing the LRE plan pursuant to 1.D.1. (8 months late); (2) developing the LRE plan pursuant to 1.F.1 (6 months late); (3) developing procedures to increase and encourage parental participation in the IEP and assessment process; (4) developing and beginning implementation of the SASI database pursuant to 3.E. and 3.F. (after the Monitor issued a directive, followed by a Court order); (5) developing procedures regarding assessment team functioning pursuant to 3.G.2. (7 months late); and (6) developing policies and procedures to implement Section 504 of the Rehabilitation Act (3 months late). Monitor's Report at 3-4.

[19] As of the Monitor's June 2001 Timelines Report (issued July 18, 2001), the Monitor had found Ravenswood compliant with 95 of the RCAP requirements (37.55%) partially compliant with 77 of the RCAP requirements (30.43%), and noncompliant with 81 of the RCAP requirements (32.02%). *See* Monitor's Report at 3.

As plaintiffs point out, "partial compliance" is not a term provided for in the Consent Decree. Rather, the Court Monitor created the category as a vehicle for recognizing any step toward compliance. While it was a well-intentioned effort to avoid demoralizing the District with overwhelming non-compliance rates, the Court is concerned that Ravenswood is reading more into the category than it deserves. Accordingly, the Court grants plaintiffs' request that the Monitor discontinue use of the "partial compliance" category, consistent with the terms of the Decree.

While the term "partial compliance" indicates some activity has occurred, by definition, the item has not achieved its intended objective. This explains why, despite partial compliance on 77 RCAP items there is still "gross, systemic noncompliance with the IDEA resulting in the pervasive denial of FAPE in the LRE to children with disabilities in the District." Aug. 9, 2001 Rostetter Decl. ¶ 21; *see also* July 2001 Verification Review (finding 54 areas of systemic non-compliance). Indeed, no matter how hard Ravenswood may try to tweak the numbers, or spin the Monitor's Report, the bottom line is that the heart of the RCAP remains unimplemented. Little progress has been made in critical areas, including training, placing students in the least restrictive environment appropriate to their IEPS, developing methods of supervision, implementing approved procedures in a number of areas, appropriately assessing students, and assisting disabled students who are also English language learners. *See* section I, *supra; see also* Aug. 9, 2001 Rostetter Decl. ¶ ¶ 24 , 26 (Ravenswood has made "only negligible progress" and "the situation of children with disabilities in the District has scarcely changed over the past three years").

Thus while Ravenswood has certainly made some headway, and those efforts should not be minimized, the progress achieved so far can not fairly be described as "substantial"in light of the fundamental changes required by the RCAP. More importantly, Ravenswood's focus on substantial progress is misplaced. As set forth above, the pertinent inquiry is not whether Ravenswood's progress can be labeled "substantial," but whether it can demonstrate that it took "all reasonable steps within its power to comply" with the RCAP. *Go-Video*, 10 F.3d at 695. As explained above, the District clearly has not met this burden.[20]

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[20] In its papers, Ravenswood also indicated that it takes issue with the Monitor's grading of some RCAP items, which it contends is too subjective, and that its compliance rates should therefore be higher than that reflected in the Monitor's reports. As such, the District requested an "opportunity to fully address the subjectivity of the monitoring findings by calling witnesses, including the Monitor and District personnel involved in attempting to implement specific RCAPs, before the Court rules on the plaintiffs' motion." Ravenswood's Resp. to OSC at 2. The evidence is so overwhelming, however, that Ravenswood has not made substantial progress in implementing the RCAP, much less taken all reasonable steps within its power to comply, that the Court concludes such a hearing would not materially assist the Court

Ravenswood's next argument -- that it was prevented from making any further progress by events beyond its control -- fares no better. It emphasizes that its Assistant Superintendent for Special Education and Director of Special Education both resigned around September 2000 leaving it with no special education leadership for four months, until January 2001. These vacancies, they contend, created a "deep hole" from which they have had to climb. July 26, 2001 Tr. at 8. As detailed above in section I, however, the history of this case shows that the District began falling into a "deep hole" years ago. Thus, while the four-month interruption in special education administrative staffing no doubt added to delays, the District's attempt to pin years of neglect and hostile attitude on this circumstance is hardly persuasive. In fact, the RCAP noncompliance rate had already climbed to 81.25 percent in the two months prior to the departure of the staff in question. *See* Monitor's July 18, 2001 Report Card report (for June 2001 Timelines); *see also* Knight July 26, 2001 Tr. at 28 (acknowledging 81.25% non-compliance rate prior to departure of former Assistant Superintendent). The District also concedes that "[d]uring the last three months of these individuals' tenure they . . . made little to no progress." Ravenswood Resp. to OSC at 8.[21] Nor did the Ravenswood's performance significantly improve after it filled the Assistant Superintendent position in January. Finally, the Court notes that many RCAP requirements are the direct responsibility of either the Superintendent or the Associate Superintendent -- not the Assistant Superintendent or Director of Special Education. Monitor's Report at 2. Given all of the above, the Fall 2000 staffing gap

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in this proceeding and would only result in further delay. The Court also notes that prior to this contempt proceeding, Ravenswood never indicated that it disputed the Monitor's findings. *See* July 26, 2001 Tr. at 45 (acknowledging that District had not disputed any findings in the Monitor's reports over the previous year and a half).

[21] The District also notes that although the special education staff was making "little to no progress"during these three months that they "continued to reassure the District Superintendent that they were working to achieve compliance." Ravenswood Response to OSC at 8. Had the Superintendent or Board held this staff accountable, however, and either reviewed their actual productivity or spoken to the Court Monitor, they would have realized the lack of progress actually being made. This comment thus only serves to highlight the lack of involvement of, and accountability demanded by, the Superintendent and the Board in the area of RCAP implementation.

does little to demonstrate that Ravenswood has otherwise taken all reasonable steps within its power to comply with the RCAP.

The District also argues that it was prevented from showing better progress during the period May through July 2001 due to actions by the CDE. Specifically, it contends that the CDE failed to tailor its May, June, and July work plans for the District to the RCAP requirements being monitored for those months. As a consequence, the District's efforts, which were focused on the work plans, failed to translate into improved progress on the Monitor's report cards. While, for a variety of reasons, the work plans were not as closely tailored to the items being monitored as they might have been, even taking this factor fully into account, the Court is not convinced that the District took all reasonable steps in its power to comply during this three month period.

First, putting aside the issue of RCAP compliance, the District fell short in its efforts to complete the work plans. For example, "the majority" of the July work plan items were not completed as of July 26, 2001. Pittman July 26, 2001 Tr. 73-74; *see also* Snell Decl., Exh. B (showing status of numerous June work plan items as only partially complete or not complete). Second, despite significant overlap between the June work plan and items monitored at the end of June 2001, *see* Snell Decl., Exh. B, the District made disappointing progress. *See* June RCAP Report Card and Follow-Up Monitoring Status Synopsis. Finally, the District continued its pattern of failing to follow through on RCAP items even after a specific matter is brought to its attention. At the May 31, 2001 hearing, for example, the Superintendent represented that various items were being worked on and/or would be done by the end of June or July. In a number of these cases the items are still not done.[22] In short, while a more complete

[22] For example, at the May 31, 2001 hearing, the Court Monitor inquired about RCAP item 2.D.2. which requires an assessment of the program providing early identification for young children with disabilities. May 31, 2001 Tr. at 40 The July/August 2000 Report card showed that this assessment had not been done. Nor had it been done when the Monitor re-monitored this item in December 2000, February 2001, and April 2001. *Id*. at 41. The Superintendent responded that there is a committee assigned to this task that has been meeting diligently and that the assessment should be completed by June 30, 2001. *Id*. Yet, as of the

correlation between the work plans and the RCAP monitoring schedule could have somewhat improved Ravenswood's abysmal report card results for May through July, the Court is not persuaded that the District would have shown dramatic improvement even had the correlation been perfect. Nor, of course, does this issue detract from the more fundamental point that Ravenswood has failed to demonstrate that it has taken all reasonable steps within its power to comply with the RCAP over the life of decree.

The District also emphasizes that since 1996, it has had to respond to two grand jury investigations and time consuming Public Records Act requests. In addition, the Superintendent was charged with, and then tried and acquitted of, various felony counts. While these events no doubt drained energy and resources, they do not outweigh the compelling evidence that the District has failed to take all reasonable steps within its power to comply with the RCAP.

Finally, the District suggests that its lack of further progress under the RCAP should be excused because the RCAP is overly ambitious and onerous. "The timelines under which the District was required to accomplish the 260 corrective actions, twenty-two months from the date the Consent Decree was signed, amounted to an expectation that the District would

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latest, August 2001 Monitor's RCAP Report Card (covering the period through August 31, 2001 and issued September 20, 2001), nothing had been provided to the Monitor.

The Court Monitor also inquired about RCAP 2.V.1 which requires the District to develop a plan to train child development center ("CDC") personnel in practices which assist them in educating students with disabilities. This item was monitored in September 2000, January 2001 and April 2001 and no plan had been produced. *Id*. at 50. Again the Superintendent stated on May 31, 2001 that a committee was working on that plan and had submitted or was planning to submit something. *Id*. On August 31, 2001 the District finally submitted a document setting forth five training dates for child development staff. The document failed, however, to provide for a mentoring component to the training, which is required by the RCAP and is a critical aspect of such training. *See* Modified RCAP 2.V.1 (requiring development and implementation of "*mentored* training of CDC personnel") (emphasis added).

Other similar examples abound. With respect to RCAP item 3.L.3. the Superintendent stated she would check with her staff to try and find out why it hadn't been done and noted it would be re-monitored on July 31, 2001. May 31, 2001 Tr. at 62. Yet, as of the latest, August 2001 Monitor's RCAP Report Card (covering the period through August 31, 2001 and, issued September 20, 2001), this item was still non-compliant. With respect to RCAP item 3.Q.1., the Superintendent testified that this was a plan "that we are working on . " *Id*. at 51. While the District has finally hired a consultant to develop the plan, as of the latest, August 2001 Monitor's RCAP Report Card, (covering the period through August 31, 2001 and issued September 20, 2001), the plan itself still has yet to be developed.

complete each task within less than two days." Ravenswood's Resp. to OSC at 7. As an initial matter, the Court notes that the RCAP clearly contemplates that the District will pursue a variety of RCAP activities in different areas simultaneously pursuant to the carefully planned sequence provided for in the RCAP. Thus, the suggestion that the District has only two days to complete each activity seriously misreads the intent of the RCAP. Second, while the RCAP is no doubt ambitious -- as befits the serious nature of the problems at hand-- Ravenswood agreed to the timelines contained in both the original RCAP and in the modified RCAP. Of course, were the District at all close to meeting its RCAP obligations, its charge of undue burden might have more force. The District is so far off the mark, however, that its complaint rings hollow.

III. REMEDY FOR CONTEMPT

As is oft stated, "'courts have inherent power to enforce compliance with their lawful orders through civil contempt.'" *Spallone v. United States*, 493 U.S. 265, 276, 110 S.Ct. 625, 632 (1990) (citation omitted).[23] In so doing, courts may draw upon their "broad equitable powers," *Stone*, 869 F.2d at 861, so as to adequately address the task at hand. *Spallone*, 493 U.S. at 276. At the same time, federal courts must be mindful of the "'interests of state and local authorities in managing their own affairs.'" *Id*. (citation omitted). As such, they must

[23] "A consent decree is enforceable as a judicial decree and 'is subject to the rules generally applicable to other judgments and decrees.'" *Labor/Cmty Strategy Ctr. v. Los Angeles Metro. Transp. Auth* No. 99-56581, 2001 U.S. App. LEXIS 19410, at *14 (9th Cir. Aug. 31, 2001), ___F.3d ___ (citing *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 378 (1992). Indeed, a federal court's power to enforce a consent decree is no less than the power to enforce any other judgment. *Stone v. San Francisco*, 968 F.2d 850, 861 n.20 (9th Cir. 1992) ("The respect due the federal judgment is not lessened because the judgment was entered by consent").

exercise restraint, using "the 'least possible power adequate to the end proposed.'" *Id*. at 280 (citation omitted); *Stone*, 968 F.2d at 861; *see also Missouri v. Jenkins*, 495 U.S. 33, 51 (1990) (before intruding on local authority, district court must assure itself that no lesser alternatives are adequate to the task.). Where, as here, contempt sanctions are invoked to coerce obedience, the Court must also consider "the character and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired." *United Mine Workers of Am. v. United States*, 330 U.S. 258, 304, 67 S.Ct. 677, 701 (1947).

In this case, plaintiffs and the CDE ask the Court to temporarily transfer the legal powers, duties, and responsibilities of the Ravenswood Board of Trustees and Superintendent to the State Superintendent of Public Instruction ("SPI"). They contemplate that the SPI would then appoint an administrator to act as a receiver for the District. The administrator would oversee the implementation of the RCAP and operations of the District until such time as the RCAP is fully implemented.

As the case law makes clear, the fact that local officials are "elected . . . cannot put [them] beyond the reach of the law." *Morgan v. McDonough*, 540 F.2d 527, 534 (1st. Cir. 1976). Thus, courts are empowered to appoint receivers to take over state or local institutions, including local schools, if necessary to enforce a court order. *Id.* at 533 (appointing receiver for Boston High School)*; Dixon v. Barry*, 967 F.Supp. 535 (D.D.C. 1997) (appointing receiver for Commission on Mental Health Services)*; Newman v. Alabama*, 466 F.Supp. 628, 635-36 (M.D. Ala. 1979) (appointing receiver for Alabama State Prisons); *Turner v. Goolsby*, 255 F.Supp. 724, 730 (S.D. Ga. 1966)(State superintendent appointed receiver for Taliaferro County school system); *Gary W. v. Louisiana*, 1990 WL 17537 (E.D. La. Feb. 26, 1990) (appointing receiver to oversee state childrens' services agencies); *The Judge Rotenberg Educ. Cntr., Inc. v. Comm'r of the Dep't of Mental Retardation*, 677 N.E.2d 127, 424 Mass.430 (1997) (appointing receiver of state Department of Mental Retardation); *see generally Stone*, 968 F.2d at 861 ("when the least intrusive measures fail to rectify the problems, more intrusive measures are justifiable").

As plaintiffs and CDE acknowledge, however, ordering a state takeover of a local school district is an "extraordinary remedy" to be invoked only "when the facts indicate that all other remedies will fail." CDE Resp. to OSC at 2. In *Morgan*, 540 F.2d 527, for example, the Court observed that "direct judicial intervention in the operation of a school system is not to be welcomed, and it should not be continued longer than necessary. But if in extraordinary circumstances it is the only reasonable alternative to noncompliance with a court[] [remedy], it may, with appropriate restraint, be ordered." *Id*. at 533; *see also id.* ("when the usual remedies are inadequate, a court of equity is justified . . . in turning to less common ones, such as a receivership, to get the job done"); *Newman*, 466 F.Supp. at 635 ("The extraordinary circumstances of this case dictate that the only alternative to non-compliance with the Court's orders is the appointment of a receiver for the Alabama prisons."); *Bracco v. Lackner*, 462 F.Supp. 436, 456 (N.D. Cal. 1978) (receivership is "remedy of last resort").

Plaintiffs and CDE vigorously assert that the time for deference to local officials in Ravenswood has passed and that further attempts to implement the RCAP under the current administration will be futile, leaving receivership as the Court's only viable option. This may well be true. Education experts and consultants familiar with the case have concluded as much. *See* Aug. 9, 2001 Rostetter Decl. ¶ 28 ("In the absence of sweeping changes at the top administration, I cannot envision the successful implementation of the changes the District must make in order to comply with the IDEA"); Aug. 9, 2001 Coulter Decl. ¶ 21 (expressing opinion that unless the current top administration is replaced, no effective change will take place in Ravenswood's capacity and ability to provide FAPE to children with disabilities); Aug. 13, 2001 Pittman Decl. ¶¶ 4, 10 (same).

The Court is also deeply cognizant that the injuries inflicted on the students by the District's failure to provide adequate special education services are often irreparable. As Dr. Coulter observed, "many children had already suffered from the loss of educational opportunity at critical times in their lives. Those losses will be difficult to reverse." Aug. 13, 2001 Coulter Decl. ¶ 12. *See also* July 22, 1997 Ragsdale Decl. ¶ 55 ("[O]ne to two years of lack of proper services may cause irreversible injury to the students' development").

The Court also notes that many of the children served by Ravenswood are low-income, and come from racial minority groups with limited English proficiency who already face higher dropout rates and lower employment rates. For those students who face the additional challenge of a disability, the risk of injury from lack of special education services is even more grave. Heumann Decl. ¶ 11.

Ravenswood contends, however, that the Court is obliged to give it one more opportunity to demonstrate that it is capable of effectively implementing the RCAP. It asserts that it now stands ready and able to tackle the RCAP with renewed determination and additional resources, and that it is "poised to make substantial progress." Ravenswood Reply at 6. It points out that the Board of Trustees has become substantially more involved in the RCAP in the past few weeks and has appointed a subcommittee of two members who will engage in active oversight of the RCAP implementation process, including ensuring that contracts are promptly approved and funding requests given top priority. It further represents that it has formed an alliance with members of the University of San Francisco's Education Department who will assist the District with team building, and development of oversight techniques. Snell Decl., Exh. O (Decl. of Dr. Patricia Mitchell). The District has also obtained assurances from the San Mateo County Superintendent that it will assist Ravenswood in implementation of the RCAP. Also newly on board is Dr. Pamela Downing-Hosten, who is expected to serve as the Assistant Superintendent for Special Education, and whom CDE has praised as "quite capable." July 26, 2001 Tr. at 77. Other important mid-level positions have also recently been filled, including IEP coordinator, Student Study Team ("SST") facilitator and Data Manager. Ravenswood particularly emphasizes, however, that it has retained an outside consultant, Dr. Michael Norman who will spend 60 days during the period September 1, 2001 - March 31,

2002[24] to provide "technical assistance and support." Aug. 22, 2001 Tr. at 8; Ravenswood's Aug. 31, 2001 Submission, Exh. A.

Although Dr. Norman's contract provides no specifics, Ravenswood states that Dr. Norman is expected to: (1) provide a comprehensive needs assessment (by October 15, 2001), (2) develop a conceptual framework and development plan for a commonly accepted set of data and related database for use by all the parties, (3) design a school-based compliance monitoring system, (4) design a monitoring, quality assurance and control system, and student performance measurement system, (5) audit the district's ability to implement school-based and District-based plans, (6) provide monthly reports on implementation of compliance systems, and (7) work cooperatively with the Board, Superintendent, and Assistant Superintendent for Special Education, building-based leadership, the Monitor, and the parties to identify priorities and student-based outcomes to be addressed, monitored and refined. Ravenswood's Aug. 31, 2001 submission at 3-4. In all respects, Dr. Norman will report to the Board and Superintendent. *Id*. at 5.

The Court remains skeptical that Ravenswood will be able to efficiently and effectively purge its contempt even with the assistance of Dr. Norman and the Study Group. If the fundamental problem lies with the District's top leadership, then the hiring of a part-time consultant who reports to the Board and Superintendent and has limited authority will not ultimately succeed. The specific tasks outlined for Dr. Norman also raise questions as to the District's approach. For example, while it is understandable that Dr. Norman would want to undertake some initial evaluation of the District's handling of RCAP implementation, undertaking a "comprehensive needs assessment" appears inefficient given that the recent Verification Review, and Monitor's monthly reports, already detail the current state of RCAP compliance. It is also unclear why Dr. Norman needs to develop a separate school-based

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[24] The contract also allows Dr. Norman, upon consultation with the Board, to identify and use associates of The Study Group, Inc. for particular assignments for up to 60 additional days.

compliance system or a separate monitoring system since these are areas already covered by the RCAP. Finally, the above items are not linked to specific RCAP items and thus it is difficult to evaluate the extent of RCAP implementation that the District expects to achieve pursuant to his contract.

Notwithstanding these concerns, the Court very reluctantly concludes that it is constrained under case precedent to give Ravenswood one final opportunity to demonstrate that it is capable of effectively implementing the RCAP in a prompt and efficient manner. Neither plaintiffs nor the CDE can provide the Court with any authority in which a receivership of a school district was imposed at this juncture of the court proceedings. Rather, the authority relied upon concerns situations in which the Court took the last resort step of a receivership only after the district or entity had been afforded further opportunities. Particularly, where as here, the District is actively, albeit belatedly, asserting its intent to cooperate with the Court's order, has expressed new found enthusiasm, and has taken some concrete, albeit questionably sufficient, steps to improve its chances of success, the proper exercise of discretion requires that the Court provide the District with one last opportunity to purge its contempt before the Court resorts to the most intrusive and extraordinary remedy within its power.

In reaching this conclusion, the Court has also taken into consideration that neither CDE nor plaintiffs have yet presented the Court with more than the abstract notion of a receivership. No specific administrator(s) have been proposed who can be evaluated; nor has any such administrator outlined any approach for bringing the District into compliance on an efficient timetable. *See e.g. Dixon*, 967 F.Supp. at 550-51 (in weighing whether receivership is justified, court should consider whether a receiver would provide effective and prompt relief).

This is not to say that this Court is required to stand passively by for an undue time while students continue to be deprived of critical services and suffer possible irreparable injury. While some courts may have waited inexplicably long periods of time before appointing a receiver, *see e.g. Gary*, 1990 WL 175337, at *28 (receiver appointed after 15

years of failed remedies), as plaintiffs observe, the mistakes of those cases, and the attendant loss of years of critical services, need not, and shall not, be repeated here. As discussed in section I above, this Court has already exhausted a number of lesser remedies and intermediate steps. These include several explicit warnings to Ravenswood, the extension of deadlines in the modified RCAP, the initiation of monthly court meetings in December 2000, the intensive technical assistance and support provided by the CDE, and the three-month continuation of the hearing on plaintiffs' contempt motion, combined with monthly progress hearings in court. It should be clear then, that this is not a situation in which the Court is just beginning to exhaust lesser remedies. Rather, this is a case in which a number of lesser steps have already been tried and exhausted without success. While, as discussed above, the Court concludes that it is compelled to offer the District one more opportunity to demonstrate that it has the ability and commitment to effectively and efficiently implement the RCAP before turning to receivership --given the history of this case, it is justifiably just that -- *one last opportunity*.[25]

Accordingly, and in light of the above, the Court has determined that it will proceed as follows. The contract between Dr. Norman and the District began on September 1, 2001 and concludes on March 31, 2002, a period of 7 months. This is more than ample time within which to judge whether Ravenswood's professed renewed commitment and enhanced ability

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[25] The Court notes that, while it does not now rule on the efficacy of other potential "partial receivership"- type remedies at this time, the parties have indicated that they would likely be so impracticable as to be futile. For example, the uncontroverted evidence before the Court demonstrates that the provision of regular and special education services are so closely intertwined that it is essentially impossible, to effectively appoint an administrator to oversee one element and not the other. *See* Halvorsen Decl. ¶ 7; Heumann Decl. ¶ ¶ 12-13; Aug. 9, 2001 Rostetter Decl. ¶ 22; Aug. 9, 2001 Coulter Decl. ¶ 24; Parker Decl. ¶ 4, attached to CDE's Resp. to OSC; Aug. 13, 2001 Gee Decl. ¶ ¶ 18, 21. Ravenswood appears to be in agreement with this point as well. *See* Ravenswood's August 31, 2001 Submission at 9 ("It is equally important that . . . [any system] recognize that special education is a subset of the general education system . . . Any temptation to create a separate management system for special education must be avoided"); Knight, July 26, 2001 Tr. at 65 ("If you are going to improve the quality of special education you must start with regular education. "). Accordingly, creating a "partial receivership" or "co-superintendent" that is just responsible for special education does not appear to be a viable approach and would instead result in parallel administrative structures that would likely create more problems than they solve.

will in fact translate into the effective and efficient implementation of the RCAP. In particular, the Court will assess whether Ravenswood has accomplished the following:

(1) Period from now through December 31, 2001

(a) Whether Ravenswood has completed development of all plans, policies, procedures and methods of supervision mandated by the RCAP in a manner fully compliant with RCAP requirements by the governing re-monitoring date or December 31, 2001, whichever *is earliest*. Completion of the above should ensure that all plans, procedures, and policies necessary to implement the RCAP are in place, and compliant with RCAP requirements, by the end of the year.

(b) Whether the District has complied with all "next steps"specified by the Monitor in his monthly reports by the specified re-monitoring dates.[26] As such, the District must comply with all re-monitoring dates that currently fall, or will fall, within this period of time.

(2) Period from January 1, 2002 through March 31, 2002

(a) Whether Ravenswood has satisfied a selected set of "outcomes" for Ravenswood students by March 31, 2002. By "outcome" the Court is referring to both the "Expected Results" and "Standard for Assessing Effective Completion" columns provided for each corrective activity identified in the RCAP. This will enable the Court to judge whether Ravenswood is able to move beyond the development of policies, plans, and procedures, and effectively and efficiently implement the core elements of the RCAP.

[26] "Next steps" are typically incremental steps designed to assist the District in achieving compliance with a particular RCAP requirement.

The selected set of outcomes (and any appropriate interim re-monitoring dates between January 1, 2002, and March 31, 2002, for obtaining such outcomes) should be consistent with what a functioning and competent school district, taking all reasonable steps within its power, should be expected to achieve. They shall be determined through the following process:

(i) The District shall file and serve by hand or fax a proposed specific set of outcomes (with suggested re-monitoring dates of January 31, 2002, February 28, 2002, or March 31, 2002) by no later than 14 calendar days from the date of this Order.

(ii) The plaintiffs and CDE shall then, within 10 calendar days of service of the District's proposal, file a response indicating either agreement with the proposal or offering an alternative *specific* proposal.

(iii) The Court Monitor shall thereafter promptly meet with Dr. Norman and Dr. Downing-Hosten to jointly develop, by no later than November 15, 2001, a selected set of outcomes. In the event that no agreement can be reached the Court will determine the selected set of outcomes.

(b) Whether the District has complied with all "next steps" specified by the Monitor in his monthly reports by the specified re-monitoring dates. As such, the District must comply with all re-monitoring dates that currently fall, or will fall, within this period of time.

The Monitor shall continue to file monthly reports that document Ravenswood's progress consistent with the above. The CDE shall continue to meet weekly with Ravenswood to offer technical assistance and support as needed. The CDE shall file monthly reports identifying the technical assistance and support offered to Ravenswood during the previous calendar month. The reports shall also indicate whether such technical assistance or support was actually provided, and if not, the reason therefore.

Over these next critical months, the Court will also closely evaluate Ravenswood's attitude toward the remedial process, and its level of cooperation with the Court Monitor. Both factors must weigh considerably in any determination whether the District can confidently be expected to effectively and efficiently implement the RCAP. And while the District's pronouncements of a changed attitude are welcome, it is forewarned that general expressions of good intentions rapidly lose credibility and force if they are not reinforced, or worse yet, are undermined by inconsistent messages or actions by either the Board of Trustees, the Superintendent, school principals, or other District administrators.

The Court retains under submission the issue of any further appropriate remedies for Ravenswood's contempt, including the propriety of a receivership. It will notify the parties of further hearings on this issue as its gets closer to March 2002.[27]

[27] In addition to receivership, plaintiffs requested two additional remedies, both of which are denied. First, plaintiffs urged the Court to order CDE to conduct a fiscal audit of Ravenswood. Plaintiffs have failed, however, to demonstrate why such an audit is necessary to coerce compliance with the RCAP. Moreover, the San Mateo County Superintendent of Schools has already commenced an inquiry into the financial management of the District. Plaintiffs also request that plaintiffs (or their designee) be afforded wide-ranging access to District databases, files, classrooms, etc. Again, plaintiffs fail to demonstrate why such an order is necessary to achieve compliance with the RCAP-- particularly given that a Court Monitor already has full access to these items and is engaging in comprehensive monitoring of the District's RCAP-related actions.

IT IS SO ORDERED.

DATED _____

_____
THELTON E. HENDERSON
UNITED STATES DISTRICT JUDGE